

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

U.S. BANK, NATIONAL ASSOCIATION, a  
financial institution doing business in the State  
of Washington,

Plaintiff,

v.

JUNE HENDERSON, an individual,

Defendant.

Case No. 07-5010 KLS

ORDER GRANTING SUMMARY  
JUDGMENT

**I. RELIEF REQUESTED**

This matter comes before the Court on the Plaintiff's Motion for Summary Judgment. (Dkt. #13). The Plaintiff requests entry of summary judgment against the defendant June Henderson in the sum of \$82,312.80 which allegedly represents an "overpayment" made to the Ms. Henderson by U.S. Bank. The Plaintiff also requests dismissal of the Defendant's counterclaim which alleges Plaintiff's negligent breach of a fiduciary as well as contracted duty owed to the Defendant.

**II. UNDISPUTED FACTS**

This claim arises from the Defendant's ownership of stock in Qpass. In 1998 she was gifted 10,000 shares of common stock and in 2002 there was a 10 for 1 reverse stock split and conversion, which resulted in Ms. Henderson owning 1000 shares of Qpass common stock.

1 In 2006 Qpass entered into an agreement to merge with Amdocs Ltd. Pursuant to the terms of that  
2 agreement, Qpass was to become a wholly owned subsidiary of Amdocs and each outstanding share of  
3 Qpass stock was to be converted into a right to receive compensation.

4 In April 2006 Ms. Henderson became aware, via the internet, that Qpass was being acquired by  
5 Amdoc. She provided attachments to her declaration which show that as of April 18, 2006 Amdoc was  
6 selling for less than \$40 per share. None of her attachments gave any value to the shares of Qpass stock.

7 On April 21, 2006 the defendant was mailed a solicitation packet by Heller Erhman, LLC, legal  
8 counsel for Qpass. This packet contained several documents, including one that informed shareholders  
9 that they could expect to receive approximately \$4.00 per share of common stock upon approval of the  
10 merger. Ms. Henderson denies ever receiving this packet of materials and therefore also denies having any  
11 information regarding the value of the Qpass stock.

12 On May 8, 2006 Mary E. Smith, a Senior Paralegal with Heller Ehrman, wrote a letter to the  
13 Defendant<sup>1</sup> advising her that she had not exchanged her old stock certificate (Certificate No. 84) for a new  
14 one, which was required as a consequence of a 10 for 1 reverse stock split and conversion. Ms. Henderson  
15 was asked to send Certificate No. 84 to Mary Smith who would arrange to have it exchanged for the new  
16 stock certificate and then have it processed so the Defendant could receive money in exchange for her  
17 stock. Ms. Henderson did inquire of Mary Smith as to the value of the stock and was told that Mary Smith  
18 did not know the value and that it would be determined by U.S. Bank.

19 According to the terms of the merger, U.S. Bank was designated the transfer agent charged with  
20 distributing the cash payments to Qpass stock holders. It is undisputed that U.S. Bank made a mistake  
21 when it issued a check to June Henderson in the sum of \$85,858.23. The check was dated June 13, 2006  
22 and the Defendant cashed the check shortly after its receipt. It is also undisputed that the correct amount  
23 for the 1000 shares should have been \$3,545.37.

24 Sometime in late September 2006 Joyce Terry, a Bond Operations Processor for U.S. Bank, called  
25 the defendant and told June Henderson that the bank made a mistake and requested return of the overpaid  
26 funds. The defendant refused. On October 25, 2006 U.S. Bank sent a letter to June Henderson again  
27 advising her of the overpayment in the sum of \$82,312.80 and requested return of the funds.

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28 <sup>1</sup>The letter was addressed to June Gerard who is now known as June Henderson.

1 On November 21, 2006 Ms. Henderson closed on the sale of her home and on November 22, 2006  
2 she closed on her purchase of a home. Ms. Henderson used the funds from U.S. Bank for the November  
3 22, 2006 purchase of her primary residence as well as to pay for repairs and bills associated with the new  
4 residence. According to the Defendant, the “only remaining funds must be used to pay the taxes owed for  
5 2006, which include the distribution from the stocks.”

### 6 III. LEGAL STANDARD

7 Summary judgment is proper where “the pleadings, depositions, answers to interrogatories, and  
8 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material  
9 fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Anderson*  
10 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The Court must draw all reasonable inferences in favor  
11 of the non-moving party. *See F.D.I.C. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9<sup>th</sup> Cir. 1992), *rev’d*  
12 *on other grounds*, 512 U.S. 79 (1994). The moving party has the burden of demonstrating the absence of  
13 a genuine issue of material fact for trial. Mere disagreement, or the bald assertion that a genuine issue of  
14 material fact exists, no longer precludes the use of summary judgment. *See California Architectural Bldg.*  
15 *Prods., Inc., v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9<sup>th</sup> Cir. 1987).

16 Genuine factual issues are those for which the evidence is such that “a reasonable jury could return  
17 a verdict for the non-moving party.” *Anderson*, 477 U.S. at 248. Material facts are those which might  
18 affect the outcome of the suit under governing law. *See id.* In ruling on summary judgment, a court does  
19 not weigh evidence to determine the truth of the matter, but “only determine[s] whether there is a genuine  
20 issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9<sup>th</sup> Cir. 1994) (citing *O’Melveny & Meyers*, 969  
21 F.2d 747). Furthermore, conclusory or speculative testimony is insufficient to raise a genuine issue of fact  
22 to defeat summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 345 (9<sup>th</sup>  
23 Cir. 1995). Similarly, hearsay evidence may not be considered in deciding whether material facts are at  
24 issue in summary judgment motions. *Anheuser-Busch, Inc., id.* at p. 345; *Blair Foods, Inc. v. Ranchers*  
25 *Cotton Oil*, 610 F.2d 665, 667 (9th Cir. 1980).

### 26 IV. DISCUSSION

1  
2 The action for money had and received was invented by the common-law  
3 judges to secure relief from the narrower restrictions of the common-law  
4 procedure, which afforded no remedy in too many cases of merit. The  
5 action is a modified form of assumpsit. It has gone through various  
6 transformations; first from tort, then from contract, and afterwards into  
7 a remedy where there was technically neither tort nor contract. It was  
founded on the principle that no one ought unjustly to enrich himself  
at the expense of another, and the gist of the action is that the defendant  
has received money which in equity and good conscience should have  
been paid to the plaintiff, and under such circumstances that he ought,  
by the ties of natural justice, to pay it over.

8 *Seekamp v. Small*, 39 Wash. 2d 578, 584, 237 P.2d 489 (1951) citing *Bosworth v. Wolfe*, 146 Wash. 615,  
9 264 P. 413, 417 (1928).

10 It is clear that Ms. Henderson received an over payment for her 1000 shares of Qpass stock in the  
11 amount of \$82,312.80. The question is whether it is fair for her to keep those funds.

12 U.S. Bank suggests that the Defendant knew or should have known, at the time she received the  
13 check, that the amount was incorrect. The Plaintiff relies on the information which was mailed to all Qpass  
14 shareholders to support this proposition. The Defendant denies receipt of that information. That denial  
15 raises a material question of fact regarding what Ms. Henderson knew or should have known.

16 The Plaintiff suggests that the Defendant knew, as of April 2006, that Amdoc shares were selling  
17 for less than \$40 and therefore should have known that Qpass stock would have a value of less than \$40  
18 and not \$85.85. The Plaintiff alleges that this knowledge should have put June Henderson on notice that  
19 the amount in the check was incorrect. This argument, however, raises a material issue of fact as there is  
20 nothing before this court that suggests the Defendant is a sophisticated investor and therefore should have  
21 placed some meaning on the difference in stock value for Amdoc and the amount received for the 1000  
22 shares of Qpass.

23 The Plaintiff also argues that the true value of the Qpass stock was reasonably ascertainable and  
24 suggests that the Defendant could have called Qpass or consulted with a broker. However, in light of the  
25 fact that June Henderson was told by the Senior Paralegal from Heller Erhman that U.S. Bank would  
26 determine the value of the stock, it is unclear to this court that contacting Qpass or a stock broker would  
27 have provided the information sought.

28 The Plaintiff also suggests that June Henderson is an attorney in a firm that holds itself out to be

1 versed in “stock transactions, buy/sell shareholder agreements, [and] mergers and acquisitions.” However,  
2 the same factual issue remains. Could she have in fact obtained that necessary information, if she were on  
3 notice that an inquiry would be appropriate, due to the fact that either she or another attorney in her firm  
4 could have obtained the information? The undersigned believes that the inferences are such that there  
5 remains a material issue of fact in that regard.

6 However, it is undisputed that in late September June Henderson was given actual notice of the  
7 overpayment. At that time she refused to return the \$82,312.80. She also received written notice of the  
8 overpayment in a letter dated October 25, 2006. Ms. Henderson has at all times refused to return the  
9 overpayment. As of late September, June Henderson knew or should have know that the bank made a  
10 mistake. It would not be fair to permit her to profit as a result of the Plaintiff’s honest error.

11 In her counterclaim, Ms. Henderson alleges that the agency relationship created by the transmittal  
12 documents (Exhibit E - 1-7, attached to the Declaration of June Henderson (Dkt. #21)), is sufficient to  
13 prevent recovery by U.S. Bank of the overpayment. In support of her position, Ms. Henderson relies on  
14 the following language in the documents:

15 The undersigned acknowledges that the cash payment received in exchange for the Qpass common  
16 or preferred stock represented by the Certificates surrendered herewith constitutes the entire and  
17 total consideration to which the undersigned is entitled pursuant to the terms of the Merger  
Agreement.

18 The Defendant takes the position that this language irrevocably binds her, as well as U.S. Bank, to the  
19 amount of the check, regardless of whether there was a mistake on the part of the Plaintiff. This language  
20 does not lead to the result suggested. “Acknowledging” something to be true based on the information  
21 available does not prohibit a later claim of mistake. The Plaintiff made a mistake. It would be unfair to  
22 permit the Defendant to keep the overpayment of \$82,312.80 based on that error, particularly in light of  
23 the undisputed fact that the Defendant was given actual notice regarding the mistake and the corresponding  
24 overpayment.

25 Ms. Henderson has failed to raise any valid issue regarding reliance other than her feeling that the  
26 amount she received “seemed to be a fair amount.” There is no material issue of fact regarding reliance by  
27 Ms. Henderson on any representations by U.S. Bank.

28 The Plaintiff is entitled, as a matter of law, to the return of the overpayment in the sum of

1 \$82,312.80. The Plaintiff's Motion for Summary Judgment (Dkt. #13) is hereby **GRANTED** and the  
2 Plaintiff is awarded the sum of \$82,312.80 with post judgment interest at the federal judgment rate of  
3 interest provided in 28 U.S.C. §1961. In addition, the Defendant's Counterclaim is hereby **DISMISSED**.

4 DATED this 29<sup>th</sup> day of August, 2007.

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7 Karen L. Strombom  
8 United States Magistrate Judge  
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